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10/601,741	06/23/2003	Bryan T. Starbuck	MS303962.01/MSFTP438US	9003
27195	7590	03/23/2009	EXAMINER	
AMIN, TUROCY & CALVIN, LLP			BAYARD, DJENANE M	
127 Public Square			ART UNIT	PAPER NUMBER
57th Floor, Key Tower			2441	
CLEVELAND, OH 44114				
NOTIFICATION DATE		DELIVERY MODE		
03/23/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* BRYAN T. STARBUCK, ROBERT L. ROUNTHWAITE,  
DAVID E. HECKERMAN, JOSHUA T. GOODMAN,  
ELIOT C. GILLUM, NATHAN D. HOWELL  
and KENNETH R. ALDINGER

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Application No. 10/601,741  
Technology Center 2400

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Mailed: March 20, 2009

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Before DEBORAH L. PERRY *Supervisory Paralegal Specialist, Review Team*

PERRY, *Supervisory Paralegal Specialist, Review Team.*

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received by the Board of Patent Appeals and Interferences on December 23, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

AMENDMENT AFTER FINAL

A review of the file indicates that on February 22, 2008, Appellant filed an Amendment After Final (amending Claims 1 and 42). There is no indication that the Amendment was entered, however, the Appellant then incorporates the Amendment to the Claims 1 and 42 in the Appeal Brief (Claims Appendix) filed August 5, 2008. Again, it is not clear that the Amendment of February 22, 2008, was entered by the Examiner. Clarification is required.

APPEAL BRIEF

A review of the file indicates that the Appeal Brief (Claims Appendix), filed August 5, 2008, does not comply with 37 CFR § 41.37(c).

Specifically, a review of the Claims Appendix reveals that the dependence of claim(s) 2-12 & 43-52 are not consistent last entered Amendment filed on July 5, 2007. The dependency of Claims 2-12 & 43-52 have been changed from their respective dependencies to “0”.

Specifically:

<u>Claim No.</u>	<u>Dependency</u>	<u>Dependency</u>
	<u>Dependency</u> <u>Amendment</u> <u>(July 5, '07)</u>	<u>Appeal Brief</u> <u>Claims Appendix</u> <u>(Aug. 5, '08)</u>
2	1	0
3	2	0
4	2	0
5	1	0
6	1	0
7	1	0
8	1	0
9	1	0
10	1	0
11	10	0

12	1	0
43	42	0
44	42	0
45	44	0
46	42	0

<u>Claim No.</u>	Dependency Amendment <u>(July 5, '07)</u>	Dependency Appeal Brief <u>(Aug. 5, '08)</u>
47	42	0
48	42	0
49	42	0
50	42	0
51	42	0
52	42	0

It should be noted that the changes made to the Appeal Brief, Claims Appendix is considered an Amendment. Amendments may be filed concurrently with the Appeal Brief, but must be presented in a separate document. No Amendment was filed with the Appeal Brief changing the dependency of the claims. Further, there is no claim "0". Correction of the Appeal Brief, Claims Appendix is required. Appellant may file a "paper" to correct the Appeal Brief, Claims Appendix.

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) Clarify status of Amendment After Final filed February 22, 2008;
- 2) hold the Appeal Brief filed August 5, 2008, defective;

- 3) require Appellant to file a "paper" correcting the Appeal Brief, Claims Appendix;
- 4) for the Examiner to consider any "paper" submitted by Appellant; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/saw

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